

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

EDUARDO LATORRES,

Plaintiff,

v.

**9:09-CV-532
(FJS/DEP)**

**DONALD SELSKY, Special Housing
Unit Director for the Department of
Correctional Services; and CRAIG
GUMMERSON, Captain for Auburn
Correctional Facility,**

Defendants.

APPEARANCES

OF COUNSEL

**EDUARDO LATORRES
91-A-4915**

Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562-5498
Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol
Albany, New York 12224
Attorneys for Defendants

CHARLES J. QUACKENBUSH, AAG

SCULLIN, Senior Judge

ORDER

Plaintiff brought this action against Defendants pursuant to 42 U.S.C. § 1983, alleging a deprivation of his civil rights. In his complaint, Plaintiff asserted that, during the course of a disciplinary proceeding that resulted in a finding of guilt and a sentence of an extended period of

disciplinary confinement, Defendants denied him due process.¹ *See, generally*, Dkt. No. 1. In response to Plaintiff's complaint, Defendants moved to dismiss on the grounds that the Court lacked subject matter jurisdiction over Plaintiff's claims, that Plaintiff's complaint failed to state a claim upon which the Court might grant relief, and that the doctrine of qualified immunity precluded Plaintiff's claim. *See, generally*, Dkt. No. 15. In a Report and Recommendation dated January 11, 2010, Magistrate Judge Peebles recommended that this Court deny Defendants' motion to dismiss without prejudice to Defendants' right to reassert the defense of qualified immunity at a later stage of this action. *See* Dkt. No. 17 at 19.

In response to these recommendations, Plaintiff filed a letter response. *See* Dkt. No. 19. Although the Clerk of the Court docketed this letter as an objection to the Report and Recommendation, Plaintiff, in fact, "concede[d] with the Report and Recommendation" *See* Dkt. No. 19.²

Having reviewed Magistrate Judge Peebles' Report and Recommendation for clear error, and finding none, the Court hereby

ORDERS that Magistrate Judge Peebles' January 11, 2010 Report and Recommendation is **ADOPTED IN ITS ENTIRETY** for the reasons stated therein; and the Court further

ORDERS that Defendants' motion to dismiss is **DENIED** without prejudice to Defendants' right to reassert the defense of qualified immunity at a later stage of this action; and the Court further

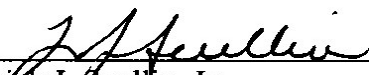
¹ This determination was later annulled as the result of Plaintiff's state-court challenge.

² The Court notes that the case number in Plaintiff's letter, "09-CV-264," is incorrect; the correct case number is 09-CV-532.

ORDERS that this matter is referred to Magistrate Judge Peebles for all further pretrial matters.

IT IS SO ORDERED.

Dated: March 7, 2010
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge